

Sixth Appellate District

San Jose, California

MONDAY, DECEMBER 6, 2004

H026152 LEE v. BORDBARI

By the Court*:

Appellant's petition for rehearing is denied.

Filed: December 6, 2004

*Before Bamattre-Manoukian, Acting P.J., Mihara, J. and McAdams, J.

H026507 PEOPLE v. LAWRENCE

The judgment is affirmed. (not published)

(Elia, J.; We concur: Rushing, P.J., Mihara, J.)

Filed December 6, 2004

H021541 TRAVIS, et al. v. COUNTY OF SANTA CRUZ

The judgment denying Travis's writ of mandate is reversed.

In accordance with the opinion in *Travis v. County of Santa Cruz*, *supra*, 33 Cal.4th 757, we remand the matter to the trial court with the following directions. As to plaintiff Travis only, his as-applied challenge to County's imposition of conditions on his second unit permit was timely. On remand, Travis is entitled to have this challenge heard in the trial court on its merits.

Travis's attack on the ordinance itself is barred by the three-year statute of limitations contained in Code of Civil Procedure section 338, subdivision (a). All of the claims of plaintiffs Stanley and Sonya Sokolow are barred by applicable statutes of limitations. The trial court's determination that the application of County's second unit conditions to Travis's property did not constitute an unconstitutional taking of property is affirmed. (not published)

(Bamattre-Manoukian, J.; We concur: Premo, Acting P.J., Walsh, J.*)

Filed December 6, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

Sixth Appellate District

San Jose, California

Monday, December 6, 2004 (continued)

H026631 PEOPLE v. CATANO

The judgment is reversed. The case is remanded to the trial court for a determination whether defendant's request to discharge his retained attorney should have been granted based on the relevant factors of the dilatoriness and disruptive potential of defendant's request. If the trial court denies this request, the trial court shall reconsider the amount of the restitution fine in resentencing defendant. If the trial court grants this request, defendant will be entitled to proceed with a new attorney. (not published)

(Walsh, J.*; We concur: Premo, Acting P.J., Bamattre-Manoukian, J.)

Filed December 6, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

TUESDAY, DECEMBER 7, 2004

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Bamattre-Manoukian, Acting P.J.; Mihara, J.; McAdams, J.; and J. Michel Casique, Deputy Clerk.

H026885 PEOPLE v. HARLESS

Cause called and argued by Marylou Hillberg appearing for Appellant and by Joan Killeen, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Bamattre-Manoukian, Acting P.J. and McAdams, J. step down and Rushing, P.J. and Premo, J. take the bench.

H024624 MAY v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

Cause called and argued by Felicia R. Reid appearing for Appellant Trustees and by Ellen Lake appearing for Appellant May. Cause ordered submitted.

H027135 CITY OF WATSONVILLE v. CALIFORNIA STATE DEPARTMENT OF HEALTH SERVICES

Cause called and argued by Gary B. Wesley appearing for Appellant and by Howard B. Soloway appearing for Respondents California Dental Association and by Zackery P. Morzzini, Deputy Attorney General, appearing for Respondent California State Department of Health Services. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Tuesday, December 7, 2004 (continued)

Premo, J. leaves the bench and Elia, J. takes the bench.

H026978 TOPSAIL COURT HOMEOWNERS ASSOCIATION v. COUNTY OF SANTA CRUZ, et al.

Cause called and argued by Dale Dawson appearing for Appellant and by Rahn Garcia appearing for Respondents and by John M. Gallagher appearing for Respondents. Cause ordered submitted.

Rushing, P.J., Elia, J., and Mihara, J. leave the bench and Premo, Acting P.J., Bamattre-Manoukian, J., and Walsh, J.* take the bench. (*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H026508 THE PEOPLE v. MORALES

Cause called and argued by Richard L. Rubin appearing for Appellant and by Allen R. Crown, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H027086 In re DELUNA on Habeas Corpus

Cause called and argued by Song Jin Hill, Deputy Attorney General, appearing for Appellant and Steve Defilippis appearing for the Respondent. Cause ordered submitted. Court recesses until 1:30 p.m.

H027022 PEOPLE v. LAWRENCE C.

The dispositional order is affirmed. (not published)
(Rushing, P.J.; We concur: McAdams, J., Walsh, J.*)
Filed December 7, 2004

(*Judge of the Santa Clara Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

Sixth Appellate District

San Jose, California

Tuesday, December 7, 2004 (continued)

H027377 In re WILLIAM M.; MONTEREY DEPT. OF SOCIAL SERVICES v. STEVEN M.

The order terminating appellant's parental rights is vacated, and the matter is remanded to the juvenile court with directions to order the Monterey County Department of Social Services to comply with the notice provisions of the Indian Child Welfare Act. (25 U.S.C. § 1901 et seq.) This should include sending Form SOC 318, amended to include William's grandfather's Ute ancestry, and Form 319, indicating the purpose and dates of further proceedings in this matter, by registered mail, return receipt requested, to the Unitah and Ouray Tribal Business Community, the Ute Mountain Ute Tribe, the Skull Valley General Council, and the Southern Ute Indian Tribe. If after proper notice, a tribe determines that William is an Indian child as defined by the Act, the juvenile court is ordered to conduct a new Welfare and Institutions Code section 366.26 hearing in conformity with all provisions of the Act. If, on the other hand, no response is received or the tribes determine that William is not an Indian child, all previous findings and orders shall be reinstated. (not published)

(Elia, J.; We concur: Rushing, P.J., Premo, J.)

Filed December 7, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California.

Present: Rushing, P.J.; Premo, J.; Elia, J.; and S. Nasson, Deputy Clerk.

H026914 PEOPLE v. JOSE C.

Cause called and argued by Peter Goldscheider appearing for Appellant and by Christopher Grove, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H024128 PEOPLE v. WONG

Cause called and argued by Solomon Wollack appearing for Appellant and by Frances Dogan, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H027204 STEVENS CREEK/CUPERTINO ASSOCIATES LLC v. UNION OIL COMPANY OF CALIFORNIA, et al.

Cause called and argued by Steven Kester appearing for Appellant and by Stephen Erb and John Ross appearing for Respondents. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Tuesday, December 7, 2004 (continued)

H024089 DENEVI v. GREEN VALLEY CORPORATION, et al.

H024292 DENEVI v. GREEN VALLEY CORPORATION, et al.

H024293 DENEVI v. GREEN VALLEY CORPORATION, et al.

H024374 DENEVI v. GREEN VALLEY CORPORATION, et al.

H025206 DENEVI v. GREEN VALLEY CORPORATION, et al.

Causes called and argued by Gary Simms appearing for Appellant and by John Reese appearing for Appellants. Causes ordered submitted. Court adjourns.

H025930 PEOPLE v. VENTIMIGLIA

The judgment is affirmed. (not published)
(Rushing, P.J.; We concur: Premo, J., Mihara, J.)
Filed December 7, 2004

H027441 In re KYLE A.; SAN BENITO HEALTH & HUMAN SERVICES v. PAMELA A.

The juvenile court's order under section 366.26 selecting guardianship as the permanent plan for Kyle A. and dismissing the dependency is affirmed. (not published)
(Rushing, P.J.; We concur: Elia, J., Mihara, J.)
Filed December 7, 2004

H026400 Conservatorship of MCDOWELL; CECIL, Acting Public Guardian v. NETCHARU

The order granting substituted judgment is reversed. The matter is remanded for the court to reconsider the petition. Objector is entitled to her costs on appeal. (Rule 27, Cal. Rules of Ct.) (not published)
(Rushing, P.J.; We concur: Premo, J., Mihara, J.)
Filed December 7, 2004

WEDNESDAY, DECEMBER 8, 2004

H025056 PEOPLE v. KIRBY

The judgment is affirmed. (not published)
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)
Filed December 8, 2004

Sixth Appellate District

San Jose, California

Wednesday, December 8, 2004 (continued)

H026256 PEOPLE V. BARRETT

The judgment is affirmed. (not published)
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed December 8, 2004

THURSDAY, DECEMBER 9, 2004

(no minute approved orders)

FRIDAY, DECEMBER 10, 2004

H026000 PEOPLE v. TRUJILLO

(Filed order modifying opinion and denying petition for rehearing.) There is no change in judgment. (not published)
(Premo, Acting P.J.; We concur: Bamattre-Manoukian, J., Walsh, J.*)

Filed December 10, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H026251 PEOPLE v. KING, et al.

The judgment as to each appellant is modified to show a total laboratory analysis fine of \$50 and a total penalty assessment of \$85. The clerk of the court is instructed to amend the abstract of judgment accordingly. The judgment is otherwise affirmed. (not published)

(Elia, Acting P.J.; We concur: Bamattre-Manoukian, J., McAdams, J.)

Filed December 10, 2004

H027429 PEOPLE v. JUAREZ

The judgment is affirmed. (not published)
(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)

Filed December 10, 2004